IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO. 457 OF 2005
IN
SUIT NO. 869 OF 1985

Deepa Tarachand Kashyap ....Plffs.
vs.
J.B. Metal Industries P.Ltd .....Defnds.

CHAMBER SUMMONS NO. 448 OF 2005
IN
SUIT NO. 868 OF 1985

Niranjana Arjandas Kashyap
alias Rashmi Punjwani ....Plffs.
vs.
J.B. Metal Industries P.Ltd .....Defnds.

CHAMBER SUMMONS NO. 446 OF 2005
IN
SUIT NO. 867 OF 1985

Kamla Arjandas Kashyap ....Plffs.
vs.
J.B. Metal Industries P.Ltd .....Defnds.

CHAMBER SUMMONS NO. 467 OF 2005
IN
SUIT NO. 871 OF 1985

Arjandas Tekchand Kashyap ....Plffs.
vs.
J.B. Metal Industries P.Ltd .....Defnds.

CHAMBER SUMMONS NO. 468 OF 2005
IN
SUIT NO. 869 OF 1985

Arjandas Tekchand Kashyap(HUF) ....Plffs.
vs.
J.B. Metal Industries P.Ltd .....Defnds.

Ms. K.C. Nichani with Mr. Lulla for the plffs.

Ashish Kamath with S.J. Khare for defnds.

CORAM: S.U. KAMDAR, J.

DATE : 3RD AUGUST, 2005.

P.C. :

1. These group of chamber summons are taken out by the defendant for amendment of the written statement. Two grounds are raised by the learned counsel for the plaintiffs opposing the amendment. It is contended that the amendment changes the entire cause of action. I have perused the written statement and amendment proposed. I do not find from the averment made in the proposed amendment that any new cause of action is sought to be introductted. In my opinion that averments only

adds certain new facts to the existing pleas. In any event in view of the judgment of the apex court reported in **Ragu Thuilak D. John vs. S. Rayappan and Ors. reported in (2001) 2 SCC 472 and Pankaja and Anr vs. Yellappa (Dead) and Lrs. reported in (2004) 6 SCC 415** the amendment cannot be refused. Amendment is required to be granted.

2. The second contention urged that it would likely to prolong the trial, In the recent judgment of the apex court reported in **(2005) 5 SCC 142 Surinder singh vs. Kapoor Singh(Dead) through Lrs. and Ors** wherein in para-13 the apex court has held that amendment can be granted of the trial court proceedings even at the stage of appeal in the supreme court. Para-13 of the said judgement is reproduced hereunder :

> 13. The question which deserved consideration now is as to whetehr the application for amendmetn of the plaint filed by the plaintiff-respondents should be allowed. Sub-section (3) of section 12 does not lay down any limitation for filing such an application. Such an application can be filed at any stage of the proceedings and in that view of he matter an application even before

this court would be maintainable.

3. However the aforesaid cannot be a ground for not compensating the plaintiff in terms of cost. In view of the fact that the amendment is now proposed when the witness is already under cross-examination, it is necessary that the plaintiff be compensated appropriately by way of cost. I therefore allow the present chamber suimmons in terms of prayer clause (a). I direct the defendant to carry out the amendment within a period of one week from today. Additional issues may be framed. The defendant is directed to pay cost to the plaintiff quantified at Rs.7500/- each chamber summons.

. Matter to be on board on 23.8.2005.

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